

FINANCE COMMITTEE

11-0587R

REPLACEMENT

RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF \$2,265,000 GENERAL OBLIGATION SEWER UTILITY REVENUE REFUNDING BONDS, SERIES 2011D; ESTABLISHING THE TERMS AND FORM THEREOF; CREATING A DEBT SERVICE FUND THEREFOR; AND AWARDED THE SALE THEREOF.

CITY PROPOSAL:

BE IT RESOLVED, by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Bond purpose and authorization.

1.01 The City previously issued \$4,045,000 General Obligation Sewer Utility Revenue Bonds, Series 2004D, dated December 1, 2004 (the "2004 Bonds"). The 2004 Bonds were authorized and issued pursuant to Section 55 of the City Charter, Minnesota Statutes, Section 115.46 and 444.075 and Chapter 475 and other pertinent provisions of Minnesota Statutes.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and, specifically, Section 475.67, Subdivisions 1 through 12 of the Act, the City is authorized to issue and sell its general obligation bonds to refund certain maturities of the 2004 Bonds in advance of their scheduled maturities, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 The City Council hereby determines that it is necessary, expedient and in the best interest of the City's residents that the City issue, sell and deliver its \$2,265,000 General Obligation Sewer Utility Revenue Refunding Bonds, Series 2011D (the "Bonds"), to refund the outstanding 2004 Bonds maturing on and after February 1, 2014, of which \$2,170,000 in principal amount is outstanding (the "Refunded Bonds"), in order to reduce debt service cost to the City. The 2004 Bonds maturing on and after February 1, 2014, are subject to prepayment and redemption on February 1, 2013. (February 1, 2013 is herein referred to as the "Redemption Date.") The 2004 Bonds maturing on February 1, 2012 and February 1,

2013, are not being prepaid or defeased (the "Unrefunded Portion of the 2004 Bonds").

1.04 The City's plan of finance for the payment and prepayment of the 2004 Bonds is as follows:

(a) The February 1, 2012 and the February 1, 2013 maturities of the 2004 Bonds shall remain outstanding and interest thereon on February 1, 2012, on August 1, 2012, and on February 1, 2013, shall not be defeased pursuant to this Resolution and the Escrow Agreement. The City will pay from the debt service account for the 2004 Bonds the principal of and interest due on the Unrefunded Portion of the 2004 Bonds when due. Proceeds of the Bonds shall be deposited in the Escrow Account held under the Escrow Agreement described in Section 4 and Section 5.04, which together with investment earnings thereon, will be sufficient to pay (i) interest on the Refunded Bonds due on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (ii) the redemption and prepayment of the Refunded Bonds on the Redemption Date.

(b) Proceeds of the Bonds will provide the funds to pay the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and to prepay and redeem the principal of the Refunded Bonds on the Redemption Date.

1.05 The city has heretofore issued and sold the following: general obligation sewer utility revenue note dated December 12, 2003, now outstanding in the amount of \$626,000; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in the amount of \$2,690,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,580,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$745,000; general obligation sewer utility revenue note dated July 12, 2007, now outstanding in the amount of \$1,629,000; general obligation sewer utility revenue bonds dated December 13, 2007, now outstanding in the amount of \$1,795,000; general obligation water and sewer utility revenue refunding bonds

dated December 13, 2007, the sewer utility portion of such bonds now outstanding in the amount of \$825,000; general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,290,000; general obligation sewer utility revenue note dated August 3, 2009, now outstanding in the amount of \$516,073; general obligation sewer utility revenue note dated December 16, 2009, now outstanding in the amount of \$2,239,000; general obligation utilities revenue bonds dated December 17, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,479,186; general obligation sewer utility revenue notes dated September 14, 2010, now outstanding in the amounts of \$5,090,781 and \$20,758; and general obligation utilities revenue bonds dated November 23, 2010, the sewer utility portion of such bonds now outstanding in the amount of \$2,025,000.

Under the provisions of the ordinances authorizing said bonds and notes, the city reserved the privilege of issuing additional bonds and notes payable from said net revenues on a parity with the bonds and notes dated December 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, February 19, 2009, August 3, 2009, December 16, 2009, December 17, 2009, September 14, 2010, and November 23, 2010.

1.06 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile or electronic data transmission to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.07 Pursuant to such solicitation for bids for the sale of the Bonds, the City Council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Hutchinson, Shockey, Erley & Co. of Chicago, Illinois (the "Purchaser"), to purchase the Bonds at a cash price of \$2,289,436.30, upon condition that the

Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of the Bonds.

2.01 The Bonds shall be dated as of the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Amount	Interest Rate
2013	\$ 20,000	1.00%
2014	305,000	1.00%
2015	305,000	2.00%
2016	310,000	2.00%
2017	320,000	2.00%
2018	325,000	2.00%
2019	335,000	3.00%
2020	345,000	3.00%

2.02 The Bonds are not subject to optional redemption and prepayment prior to maturity.

2.03 The interest shall be payable semiannually on February 1 and August 1 in each year (each herein referred to as an "Interest Payment Date") commencing on August 1, 2012. Interest will be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The Bond Registrar appointed below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15<sup>th</sup> day (whether or not on a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 (a) The Bonds shall be prepared for execution in accordance with

the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the clerk. The corporate seal of the City may be omitted as permitted by law. In case any officer whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The clerk is authorized to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as public document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 3.01 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall

govern.

(c) All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single Bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and delivery, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new Bond in Book-Entry Form in exchange for a previous Bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form

shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

(i) with respect to notices of redemption; and

(ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the city council. Upon surrender for transfer of any Bond at the

principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this Resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the City and the Purchaser. Printed or typewritten and executed Bonds shall be furnished by the City without cost to the Purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the treasurer to the Purchaser upon receipt of the purchase price plus accrued interest.

### Section 3. Form of the Bonds.

3.01 The Bonds shall be printed or typewritten in substantially the



following form:

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF ST. LOUIS

CITY OF DULUTH  
GENERAL OBLIGATION SEWER UTILITY REVENUE REFUNDING BOND  
SERIES 2011D

R-\_\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	November __, 2011	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above, on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the interest rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2012. Both principal hereof and interest hereon are payable in lawful money of the United States of America by check or draft at the main office of Wells Fargo Bank, National Association of Minneapolis, Minnesota, as registrar, paying agent, authenticating agent and transfer agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City. The Bond Registrar shall make all interest payments with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15<sup>th</sup> day of the month next preceding the Interest Payment Date (whether or not a business day) at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$2,265,000, all of like original issue date and tenor, except as to number, maturity date, denomination and interest rate, pursuant to: (i) the authority contained in Minnesota Statutes, Chapter 475, Section 475.67, Subdivisions 1 through 12 and all other laws thereunto enabling; and (ii) an authorizing

resolution adopted by the governing body of the City on November 14, 2011 (the "Resolution"), for the purpose of providing money to refund in advance of maturity the outstanding principal amount of the City's General Obligation Sewer Utility Revenue Bonds, Series 2004D, dated December 1, 2004, maturing on and after February 1, 2014.

The Bonds are payable from the net revenues to be derived from the operation of the municipal sewer utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal sewer utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the Bonds, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds.

The Bonds are not subject to optional redemption and prepayment prior to maturity.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate and deliver, in exchange for this Bond, one or more new fully registered Bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the principal amount of this Bond, of the same maturity, and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, in St. Louis County, Minnesota, by its City Council, has caused this Bond to be executed in its name by the facsimile signatures of the mayor and the clerk.

ATTEST:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of the Bond registered in the name of the owner named above in the principal amount and maturity date stated above and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
11/___/2011	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_  
Social Security or Other  
Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank, Trust Company, member of  
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

#### Section 4. Escrow Agreement; Escrow Agent.

4.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the "Escrow Agent") with respect to the Refunded Bonds.

4.02 On or prior to the delivery of the Bonds, the mayor and the clerk are hereby authorized and directed to execute on behalf of the City an escrow agreement (the "Escrow Agreement") with the Escrow Agent in substantially the form now on file with the clerk as public document No. \_\_\_\_\_. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form

presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

Section 5. Covenants, revenues, accounts and tax levies.

5.01 (a) The City Council covenants and agrees with the holders of the Bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the municipal sewer utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal sewer utility in a separate Sewer Utility Operating Account within the Public Utility Sewer Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal sewer utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the City Council. Sums from time to time on hand in this account, in excess of sums required to make

such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all sewer utility bonds when due.

(b) Until the Bonds issued hereunder are fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Debt Service Fund") in the Public Utility Sewer Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Bonds and on any other bonds which have been or may be issued and made payable from said net revenues of the sewer utility. Unless deposited in the Escrow Account, the treasurer shall credit to the Debt Service Fund unused discount (\$466.43) and the amount of accrued interest on the Bonds. The treasurer shall transfer from the Sewer Utility Operating Account to the Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Bonds, and all charges due to the Bond Registrar. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the City Council.

(c) Surplus utility revenues from time to time received in the Sewer Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Sewer Utility Operating Account and in the Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the City Council.

5.02 It is hereby determined that upon the receipt of proceeds of the Bonds (the "Proceeds") for payment of the principal and interest on the Refunded Bonds that an irrevocable appropriation to the Escrow Account shall have been made within the meaning of Section 475.61, Subdivision 3(g) of the Act and the clerk is hereby authorized and directed to certify such fact to and request the county auditor to cancel any and all tax levies made by the Council resolution

authorizing the Refunded Bonds for collection in the year 2012 and thereafter.

5.03 If the balances in either Debt Service Fund are ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from such Debt Service Fund when the balances therein are sufficient. It is estimated that the net revenues herein pledged and appropriated to said Debt Service Fund will be received at the times and in amounts not less than five percent in excess of the amounts needed to meet when due the principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Bonds is not limited to the revenues so pledged, and the City Council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

5.04 Escrow account.

(a) The City hereby creates an Escrow Account for the Refunded Bonds. To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (i) the proceeds of the Bonds received from the Purchaser which are not appropriated to the Debt Service Fund or are not to be used for payment of costs of issuance of the Bonds; (ii) Accrued Interest; (iii) Additional Interest [amounts referenced in clauses (i), (ii) and (iii) are herein referred to as the "Proceeds"] (the "Funds"); and (iv) investment earnings on such monies referenced in clauses (i), (ii) and (iii), for the payment of (A) interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (B) the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(b) The Escrow Account shall be maintained with the Escrow Agent pursuant to the Escrow Agreement and this Resolution. The Escrow Account shall be invested in accordance with the Act, the Escrow Agreement and this Section, in

securities specified in Section 475.67, Subdivision 8(a) of the Act, which investments will provide sufficient funds together with any cash or other funds retained in the Escrow Account for the Refunded Bonds for the payment of the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(c) From the Escrow Account there shall be paid: (i) interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (ii) the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(d) The Escrow Account for the Refunded Bonds as set forth above for the payment of the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and to prepayment and redemption of the Refunded Bonds due by reason of redemption and prepayment on the Redemption Date. The monies in the Escrow Account for the Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement shall be deposited in the Debt Service Fund.

(e) Securities purchased for the Escrow Account shall be purchased simultaneously with the delivery of and payment for the Bonds. The mayor and clerk or their designee are authorized and directed to purchase such securities.

5.05 The construction funds created for the 2004 Bonds have previously been terminated and all bond proceeds therein have been expended.

#### Section 6. Refunding; findings; redemption of Refunded Bonds.

6.01 (a) It is hereby found and determined, based upon information presently available from the City's financial advisers, that as of the date of issuance of the Bonds, the issuance of the Bonds will result in a reduction of debt service cost to the City. In accordance with Section 475.67, Subdivision 12 of the Act, as of the date of issuance of the Bonds, the present value of the



dollar amount of the debt service on the Bonds, computed to their stated maturity dates, after deducting any premium, is lower by at least three percent than the present value of the dollar amount of debt service on the Refunded Bonds, exclusive of any premium, computed to their stated maturity dates.

(b) It is hereby found and determined that the Proceeds available and appropriated to the Escrow Account for the Refunded Bonds, together with investment funds thereon is sufficient for the payment of the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

6.02 The Refunded Bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the forms of notices of call for redemption attached to the Escrow Agreement, which terms and conditions are hereby approved and incorporated herein by reference. The Escrow Agent is hereby authorized and directed to send written notice of the call for redemption to the paying agent or bond registrar, as the case may be, and bond insurance company (if any), for the Refunded Bonds in accordance with their terms and the Escrow Agreement.

6.03 The Escrow Agent is authorized and directed to cause to be provided a material event notice regarding the defeasance of the Refunded Bonds in accordance with the continuing disclosure certificates of the City dated December 1, 2004, and delivered in connection with the 2004 Bonds.

#### Section 7. Certificate of proceedings.

7.01 The clerk is directed to file with the county auditor a certified copy of this Resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds have been duly entered on his register.

7.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds

and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

7.03 The mayor and clerk are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the issuance and sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

#### Section 8. Tax covenants.

8.01 The City covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to cause the interest on the Bonds to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

8.02 (a) No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the

Bonds or \$100,000. To this effect, any proceeds of the Bonds and any sums from time to time held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods or minor portion made available under the federal arbitrage regulations.

(b) The proceeds of the Bonds and money in the Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

8.03 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: General Obligation Capital Improvement Bonds, Series 2011A (the "Series 2011A Bonds"), General Obligation Capital Equipment Notes, Series 2011B (the "Notes"), and General Obligation Gas Utility Revenue Refunding Bonds, Series 2011C (the "Series 2011C Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2011A Bonds, the Notes and the 2011C Bonds; consequently, the Bonds will not be combined with any of them for a single issue under Treasury Regulations Section 1.150-1(c).

8.04 (a) The City covenants and certifies to and for the benefit of the owners of the Bonds that no use will be made of the proceeds of the Bonds, which will cause the Bonds to be arbitrage bonds within the meaning of Section 148(a)

of the Code and the Treasury Regulations promulgated thereunder. Pursuant to such covenant, the City hereby agrees to comply throughout the term of the issue of the Bonds with the requirements of Section 148 of the Code and any Treasury Regulations promulgated thereunder; to this end, the City shall:

- (i) maintain records identifying all "gross proceeds" (as defined in Section 148(f)(6)(B) of the Code) attributable to the Bonds, the yield at which such gross proceeds are invested, any arbitrage profit derived therefrom (earnings in excess of the yield on the Bonds) and any earnings derived from the investment of such arbitrage profit;

- (ii) make, or cause to be made as of the end of each Bond Year, the annual determinations of the amount, if any, of excess arbitrage required to be paid to the United States by the City (hereinafter, the "Rebate Amount");

- (iii) pay, or cause to be paid, to the United States at least once every five Bond Years the amount, if any, which is required to be paid to the United States, including the last installment which shall be made no later than 60 days after the day on which the Bonds are paid in full;

- (iv) not invest, or permit to be invested, "gross proceeds" in any acquired non-purpose obligations so as to deflect arbitrage otherwise payable to the United States as a "prohibited payment" to a third party;

- (v) retain all records of the annual determinations of the foregoing amounts until six years after the Bonds have been fully paid; and

- (vi) in order to comply with the foregoing paragraph, the City shall determine the Rebate Amount within 30 days after the close of each Bond Year and upon payment in full of the Bonds; upon each such determination, the City shall deposit in the Rebate Fund the Rebate Amount so determined; the City shall separately account for the earnings from the investment of the Rebate Amount and such earnings shall become part of the Rebate Amount.


(b) For purposes of this section, "Bond Year" shall mean the 12-month period beginning on the date of issuance of the Bonds or such other 12-month period designated by the Board which is permitted by the Code or any Treasury Regulation promulgated thereunder.

Section 9. Continuing disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as public document No. \_\_\_\_\_.

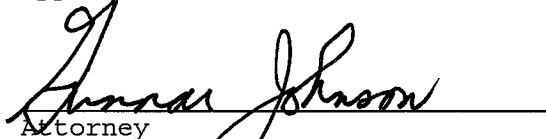
Approved:

  
Department Director


Approved for presentation to council:

  
Chief Administrative Officer

Approved as to form:

  
Attorney

Approved:

  
Auditor

FINANCE      RET:CW:rlb      11/01/2011

STATEMENT OF PURPOSE: This resolution establishes the terms and form and awards the sale of the \$2,265,000 General Obligation Sewer Utility Revenue Refunding Bonds, Series 2011D, to Hutchinson, Shockey, Erley & Co., at a true interest cost of 2.1513%.

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**ESCROW AGREEMENT**

**between the**

**CITY OF DULUTH, MINNESOTA**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION  
Minneapolis, Minnesota**

**as Escrow Agent**

**Dated as of November \_\_, 2011**

**Relating to**

**the City of Duluth, Minnesota**

**General Obligation Sewer Utility Revenue Bonds, Series 2004D  
dated December 1, 2004**

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This Escrow Agreement, dated as of November \_\_, 2011 (the "Escrow Agreement"), is between the CITY OF DULUTH, MINNESOTA, a home rule charter city and political subdivision of the State of Minnesota (the "Issuer"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, in Minneapolis, Minnesota, a national banking association (the "Escrow Agent").

#### BACKGROUND:

WHEREAS, the Issuer has heretofore issued its \$4,045,000 General Obligation Sewer Utility Revenue Bonds, Series 2004D, dated December 1, 2004 (the "2004 Bonds"), of which the Issuer has called for prepayment and redemption of \$2,170,000 in principal amount maturing on February 1 in the years 2014 through 2020 (the "Refunded Obligations"); and

WHEREAS, in addition to the Refunded Obligations, there is \$520,000 in principal amount maturing on February 1, 2012 and February 1, 2014 of the 2004 Bonds which are outstanding (the "Unrefunded Portion of the 2004 Bonds"); and

WHEREAS, the City shall pay from its sewer utility funds, and not out of the Escrow Account (hereinafter defined), the interest due and payable on the Unrefunded Portion of the 2004 Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and the principal of the Unrefunded Portion of the 2004 Bonds on February 1, 2012, and on February 1, 2013; and

WHEREAS, the Refunded Obligations maturing on and after February 1, 2014, are subject to prepayment and redemption on February 1, 2013 (February 1, 2013, is herein referred to as the "Redemption Date"); and

WHEREAS, the Resolution adopted by the Issuer pursuant to which the Refunded Obligations were issued, a copy of which is attached as Exhibit E (the "Refunded Obligations Resolution"), provide for the prepayment and redemption of the Refunded Obligations maturing on and after February 1, 2014, at a price equal to the principal amount plus accrued interest after notice of the call for redemption is given by mailing such notice to the registered owner of each bond to be redeemed not less than 30 days nor more than 60 days prior to the Redemption Date; and

WHEREAS, the Issuer has determined to provide, by the issuance of its \$2,260,000 General Obligation Sewer Utility Revenue Refunding Bonds, Series 2011D, dated as of the date hereof (the "Bonds"), funds which will be used, together with investment income thereon and together with additional funds of the Issuer, for the purpose of paying the interest on the Refunded Obligations on February 1, 2012, on August 1, 2012, and on February 1, 2013, and the prepayment of the Refunded Obligations due by reason of the redemption on the Redemption Date; and

WHEREAS, the Refunded Obligations are registered in the name of Cede & Co., as nominee for the Depository Trust Company, New York, New York ("DTC"); and

WHEREAS, proceeds of the Bonds along with certain other moneys to be delivered to the Escrow Agent are to be used to purchase certain federal securities hereinafter specified, which together with an initial cash balance are to be held in escrow by the Escrow Agent and are



to be set apart and irrevocably segregated in a special trust fund sufficient to ensure the payment of: (a) interest on the Refunded Obligations on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (b) the prepayment and redemption of the principal of the Refunded Obligations maturing on and after February 1, 2014, on the Redemption Date.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

Section 1. Authority. The Issuer has, in accordance with a resolution of its governing body, adopted on November 14, 2011 (the "Resolution"), issued and sold the Bonds for the purpose of funding an escrow account pursuant to this Escrow Agreement (the "Escrow Account"), from which shall be paid (i) interest on the Refunded Obligations on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (ii) the prepayment and redemption of the Refunded Obligations maturing on and after February 1, 2014, on the Redemption Date (collectively, the "Escrow Payment Obligations") and has authorized the call for redemption of the Refunded Obligations.

Section 2. Directions to Escrow Agent.

A. In order to fund the Escrow Account, the Issuer directs the Escrow Agent that:

- i. the proceeds of the Bonds in the amount of \$\_\_\_\_\_; plus
- ii. accrued interest paid by the purchaser of the Bonds in the amount of \$0.00 [the amounts set forth in the foregoing clauses (i) and (ii) are herein referred to as the "Proceeds"]; plus
- iii. the Issuer's funds from the debt service account for the 2004 Bonds in the amount of \$44,161.25 [the amount set forth in the foregoing clause (iii) is herein referred to as the "Funds"];

be applied by the Escrow Agent:

- a. to the purchase of obligations of the United States of America described in Exhibit B (the "Federal Securities");
- b. to establishing a beginning cash deposit in the Escrow Account (the "Cash Balance"), all as set forth on Exhibit A;
- c. to the payment of costs of issuing the Bonds as listed on Exhibit C;
- d. to payment of interest on the Refunded Obligations as provided in Section 1; and
- e. to redeeming and prepaying the Refunded Obligations in accordance with the notice shown on Exhibit D.

B. The Issuer further directs that the Federal Securities and Cash Balance, together with interest to be earned thereon, shall be used to pay (i) interest on the Refunded Obligations on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (ii) the prepayment and redemption of the Refunded Obligations maturing on and after February 1, 2014, on the Redemption Date and has authorized the call for redemption of the Refunded Obligations

C. The Issuer further directs the Escrow Agent to pay or cause to be paid from the Proceeds and Funds, all expenses listed on Exhibit C to the persons and in the amounts therein set forth.

### Section 3. Escrow Account.

A. The Escrow Agent acknowledges receipt of the Federal Securities and Cash Balance and agrees that it will hold such Federal Securities and Cash Balance in the Escrow Account, which shall be a special, segregated and irrevocable Escrow Account in the name of the Issuer.

B. The deposit made to the Escrow Account constitutes an irrevocable deposit for the benefit of the holders of the Refunded Obligations. The Federal Securities, together with any interest earned thereon and the Cash Balance in the Escrow Account shall be held in trust and shall be applied solely in accordance with the provisions hereof and of the Resolution.

C. The Escrow Account created hereby shall be unconditional and irrevocable (except with the written consent of the holders of all outstanding Refunded Obligations), and the holders of the Refunded Obligations shall have an express lien on the Federal Securities and Cash Balance in the Escrow Account until paid out, used and applied in accordance with this Escrow Agreement and the Resolution.

D. It is recognized that title to the Federal Securities and Cash Balance and other amounts held in the Escrow Account from time to time shall remain vested in the Issuer, but subject always to the prior charge and lien thereof of this Escrow Agreement and the use thereof required to be made by the provisions of this Escrow Agreement. The Escrow Agent shall hold all such Federal Securities, Cash Balance and other monies in a special trust fund separate and apart from all other funds and securities of the Escrow Agent, and shall never commingle such Federal Securities or Cash Balance with any other monies.

E. Except as set forth herein, or as may be directed by the Issuer if accompanied by a legal opinion of nationally-recognized bond counsel in form and substance satisfactory to the Escrow Agent, the Escrow Agent shall have no power or duty to invest any monies held hereunder or to make substitutions of the Federal Securities held hereunder or to sell, transfer or otherwise dispose of the Federal Securities acquired hereunder, except to collect the principal thereof at maturity and the interest thereon as the same become due and payable. In the event the Escrow Account is reinvested, such reinvestment shall comply with the provisions of Minnesota Statutes, Section 475.67.

Section 4. Escrow Verification Report. The Issuer and the Escrow Agent acknowledge receipt of a report of \_\_\_\_\_ of \_\_\_\_\_, certified public accountants (the "Escrow Verification Report"), verifying that the Federal

Securities, together with the interest to be earned thereon and the Cash Balance in the Escrow Account, will be sufficient to pay the Escrow Payment Obligations as provided for in Section 1.

Section 5. Issuer Covenants.

A. The Issuer covenants that it will not repeal or amend the Refunded Obligations Resolution or the Resolution.

B. The Issuer covenants that upon receipt of notice from the Escrow Agent pursuant to Section 6.E. of this Agreement that monies on hand in the Escrow Account and available for payment of the Escrow Payment Obligations as provided for in Section 1, will not be sufficient to make any payment when due to the holders of any of the Refunded Obligations, the Issuer will forthwith deposit in the Escrow Account, but only from monies on hand and legally available for such purpose, such additional monies as may be required to pay fully the amount so to become due and payable, and the Issuer recognizes its obligation under Minnesota Statutes, Section 475.61, to levy ad valorem taxes on all taxable property over which the Issuer has jurisdiction to the extent required to produce the monies necessary for this purpose.

C. The Issuer covenants that any monies held in trust by the Escrow Agent for the payment and discharge of any of the Refunded Obligations which remain after the Redemption Date and are returned to the Issuer in accordance with this Agreement, will be utilized in accordance with the Resolution.

Section 6. Duties of the Escrow Agent.

A. The Escrow Agent agrees with respect to the notice of redemption of the Refunded Obligations, that:

i. if it is not the bond registrar and paying agent for the Refunded Obligations, it will mail the Notice of Call for Redemption attached hereto as Exhibit D to the bond registrar and paying agent for the Refunded Obligations at least 30 but not more than 60 days prior to the Redemption Date and direct the bond registrar and paying agent for the Refunded Obligations to provide written notice of redemption to the holders of the Refunded Obligations as and when required by the Refunded Obligations Resolution; or

ii. if it is the bond registrar and paying agent for the Refunded Obligations, it shall provide written notice of defeasance of the Refunded Obligations and notice of redemption to the holders of the Refunded Obligations as set forth in Exhibit D. The Notice of Defeasance shall be given within 30 days of the date hereof and the Notice of Redemption shall be given at least 30 days but not more than 60 days prior to the applicable redemption date.

B. The Escrow Agent agrees with respect to payment of principal and interest coming due on the Refunded Obligations on and prior to the Redemption Date, that:

i. if it is not the bond registrar and paying agent for the Refunded Obligations, it shall remit from the Escrow Account to the bond registrar and paying

agent for the Refunded Obligations, the money required for payment of the principal of and interest due on the Refunded Obligations as set forth in Section 1; or

ii. if it is the bond registrar and paying agent for the Refunded Obligations, it shall remit from the Escrow Account directly to the holders of the Refunded Obligations the money required for payment of the principal of and interest due on the Refunded Obligations as set forth in Section 1.

C. The Escrow Agent agrees with respect to payment of the outstanding principal amount of the Refunded Obligations called for prepayment and redemption on the Redemption Date, that:

i. if it is not bond registrar and paying agent for the Refunded Obligations, it shall remit from the Escrow Account to the bond registrar and paying agent for the Refunded Obligations, the principal of the Refunded Obligations called for prepayment and redemption on the Redemption Date; or

ii. if it is the bond registrar and paying agent for the Refunded Obligations, it shall remit from the Escrow Account directly to the holders of the Refunded Obligations, the principal amount of the Refunded Obligations called for prepayment and redemption on the Redemption Date.

D. The Escrow Agent shall collect the matured principal of and interest on the Federal Securities as they become due and payable.

E. The Escrow Agent shall immediately notify the Issuer if at any time it shall appear to the Escrow Agent that the monies on hand in the Escrow Account and available for payment of the Escrow Payment Obligations will not be sufficient to make any payment when due to the holders of any of the Refunded Obligations.

F. The Escrow Agent shall return to the Issuer any monies held in trust for the payment and discharge of any of the Refunded Obligations which remain after the Redemption Date.

Section 7. Reliance by Escrow Agent. As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Escrow Agent shall be entitled to rely upon a certificate signed on behalf of the Issuer by the Mayor or the Clerk as sufficient evidence of the facts therein contained. The Escrow Agent may accept a certificate of the Clerk of the Issuer to the effect that a resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

Section 8. Limitation of Escrow Agent Liability. It is understood and agreed that the responsibilities of the Escrow Agent under this Escrow Agreement are limited to: (a) the safekeeping and segregation of the Federal Securities, Cash Balance and other monies deposited in the Escrow Account; (b) the collection of and accounting for the principal and interest payable with respect thereto; (c) the application of money in the Escrow Account as herein provided; and (d) providing the Notice of Redemption as required by Section 6.A. herein; provided, however,

that no provision of this Escrow Agreement herein contained shall be construed to require the Escrow Agent to keep the identical monies, or any part thereof, received for the Escrow Account on hand, but monies of an equal amount (except to the extent such are represented by investments permitted under this Escrow Agreement) shall always be maintained on hand as funds held by the Escrow Agent as trustee, belonging to the Issuer and a special account shall at all times be maintained on the books of the Escrow Agent, together with such investments. In the event of the Escrow Agent's failure to account for any money or obligations held by it in the Escrow Account, such money and obligations shall be and remain the property of the Issuer, and if for any reason such money or obligations cannot be identified, all other assets of the Escrow Agent shall be impressed with a trust for the amount thereof, and the Issuer shall be entitled to a preferred claim upon such assets.

Section 9. Fees of Escrow Agent. The Escrow Agent also acknowledges receipt of the sum of \$\_\_\_\_\_ which shall be used for the payment of the fees and expenses of the Escrow Agent in connection with and for services rendered by it pursuant to this Escrow Agreement as also set forth on Exhibit C. The Escrow Agent shall have no lien whatsoever upon, and hereby expressly waives any such lien or any claim against, any of the Federal Securities and monies in the Escrow Account for the payment of said fees and expenses. If the fees or expenses are less than estimated, the Escrow Agent shall, as soon as reasonably practicable, return the unused monies to the Issuer.

Section 10. Concerning the Bondholders. This Escrow Agreement shall be binding upon and inure to the benefit of the Issuer and the Escrow Agent and their respective successors and assigns. In addition, this Escrow Agreement shall constitute a third-party beneficiary contract for the benefit of the holders of the Refunded Obligations. Such third-party beneficiaries shall be entitled to enforce performance and observance by the Issuer and the Escrow Agent of the respective agreements and covenants herein contained as fully and completely as if such third-party beneficiaries were parties hereto. Any bank into which the Escrow Agent may be merged or with which it may be consolidated or any bank resulting from any merger or consolidation to which it shall be a party or any bank to which it may sell or transfer all or substantially all of its corporate trust business shall be a successor escrow agent without the execution of any document or the performance of any further act.

Section 11. Term. This Escrow Agreement shall terminate when the Refunded Obligations have been paid in accordance with the provisions of this Escrow Agreement. If any Refunded Obligations are not presented to the bond registrar and paying agent for the Refunded Obligations for payment when due and payable, the nonpayment thereof shall not prevent the termination of this Escrow Agreement.

Section 12. Severability. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the parties to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

Section 13. Counterparts. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument. This Escrow Agreement shall be governed by the laws of the State of Minnesota.

Section 14. Capitalized Terms. Capitalized terms not otherwise defined herein have the meaning given in the Resolution.

Section 15. Notices. Unless otherwise provided by the respective parties, all notices to each of them shall be addressed as follows:

To the Issuer:	City of Duluth, Minnesota Attention: Director of Finance 107 City Hall 411 West First Street Duluth, MN 55802
To the Fiscal Consultant:	Public Financial Management, Inc. 800 Nicollet Mall, Suite 2710 Minneapolis, MN 55402
To Bond Counsel:	Fryberger, Buchanan, Smith & Frederick, P.A. Attention: Robert E. Toftey 302 West Superior Street, Suite 700 Duluth, MN 55802
To the Escrow Agent:	Wells Fargo Bank, National Association Corporate Trust and Escrow Services 625 Marquette Avenue, 11 <sup>th</sup> Floor MAC Code N9311-115 Minneapolis, MN 55479
To the Registrar and Paying Agent for the Refunded Obligations:	Wells Fargo Bank, National Association Corporate Trust and Escrow Services 625 Marquette Avenue, 11 <sup>th</sup> Floor MAC Code N9311-115 Minneapolis, MN 55479

Section 16. Exhibits. The Exhibits to this Escrow Agreement are as follows:

Exhibit A	Sources and Uses of Funds
Exhibit B	Federal Securities
Exhibit C	Issuance Costs
Exhibit D	Notice of Defeasance and Call for Redemption of Refunded Obligations
Exhibit E	Refunded Obligations Resolution

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF DULUTH, MINNESOTA

By \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

By \_\_\_\_\_  
Its \_\_\_\_\_

(Signature page to Escrow Agreement between the City of Duluth, Minnesota, and Wells Fargo Bank, National Association, as Escrow Agent)



## EXHIBIT A

<i>SOURCES OF FUNDS</i>	
Proceeds of the Bonds	
Issuer Funds – Debt Service Account – 2004D Bonds	44,161.25
Accrued Interest	0.00
TOTAL	

<i>USES OF FUNDS</i>	
Federal Securities	
Cash Balance	
Costs of Issuance	
Rounding Amount	
TOTAL	

**EXHIBIT B**

**FEDERAL SECURITIES  
(U.S. TREASURY)**

## EXHIBIT C

### ISSUANCE COSTS

Wells Fargo Bank, National Association (escrow agent fee)	
Wells Fargo Bank, National Association (bond registrar fee)	
Public Financial Management, Inc. (financial advisor fee)	
Fryberger, Buchanan, Smith & Frederick, P.A. (bond counsel fee)	
_____ (escrow verification fee)	
Public Financial Management, Inc. (official statement printing)	
Moody's (rating agency)	
Standard & Poor's (rating agency)	
Public Financial Management, Inc. (investment in SLGS)	
Public Financial Management, Inc. (miscellaneous issuance expenses)	
TOTAL	

\*\$\_\_\_\_\_ of the issuance costs shall be transferred to the Issuer for payment of the listed issuance costs

## **EXHIBIT D**

### **NOTICE OF DEFEASANCE AND CALL FOR REDEMPTION \$4,045,000 GENERAL OBLIGATION SEWER UTILITY REVENUE BONDS, SERIES 2004D OF THE CITY OF DULUTH, MINNESOTA**

NOTICE IS HEREBY GIVEN that, by order of the City Council of the City of Duluth, Minnesota (the "City"), the City has deposited with Wells Fargo Bank, National Association (formerly known as Wells Fargo Bank Minnesota, National Association) (the "Escrow Agent") pursuant to an Escrow Agreement dated as of November \_\_, 2011, U.S. Government Obligations in an amount, together with interest thereon, which will be sufficient to pay the interest on all outstanding bonds of the maturities set forth below of the City designated as General Obligation Sewer Utility Revenue Bonds, Series 2004D, dated December 1, 2004 (the "Bonds"), through February 1, 2013, and to prepay and redeem all of the Bonds maturing on and after February 1, 2014, on February 1, 2013 (the "Redemption Date"). The Bonds which are defeased and their CUSIP numbers are as follows:

<b>Number</b>	<b>Maturity</b>	<b>Principal Amount*</b>	<b>Interest Rate</b>	<b>CUSIP Number**</b>
R-9	2014	\$275,000	4.00%	264436 6G 6
R-10	2015	285,000	4.00%	264436 6H 4
R-11	2016	295,000	4.00%	264436 6J 0
R-12	2017	310,000	4.00%	264436 6K 7
R-13	2018	320,000	4.10%	264436 6L 5
R-14	2019	335,000	4.15%	264436 6M 3
R-15	2020	350,000	4.20%	264436 6N 1

The Bonds being called for redemption and prepayment are being called at a price of par plus accrued interest to the Redemption Date on which date all interest on said Bonds will cease to accrue. Holders of the Bonds hereby called for redemption are requested to present their Bonds for payment at the office of Wells Fargo Bank, National Association, Corporate Trust Operations, P.O. Box 1517, Minneapolis, Minnesota 55480-1517, on or before the Redemption Date.

\* Indicates full call of stated maturity.

\*\* Neither the City nor the Escrow Agent shall be responsible for the selection of or use of the CUSIP number, and no representation is made as to its correctness indicated in the Notice of Defeasance and Call for Redemption. CUSIP numbers are included solely for the convenience of the Holders.

Dated: November \_\_, 2011

BY ORDER OF THE CITY COUNCIL OF THE CITY  
OF DULUTH, MINNESOTA

**EXHIBIT D, continued**

**NOTICE OF CALL FOR REDEMPTION  
\$4,045,000 GENERAL OBLIGATION SEWER UTILITY REVENUE BONDS, SERIES 2004D  
OF THE CITY OF DULUTH, MINNESOTA**

NOTICE IS HEREBY GIVEN that, by order of the City Council of the City of Duluth, Minnesota (the "City"), there have been called for redemption and prepayment on

February 1, 2013,

all outstanding Bonds of the City designated as General Obligation Sewer Utility Revenue Bonds, Series 2004D, dated December 1, 2004, having stated maturity dates of February 1 in the years 2014 through 2020, both inclusive, totaling \$2,170,000 in outstanding principal amount, and with the following CUSIP numbers:

<b>Number</b>	<b>Maturity</b>	<b>Principal Amount*</b>	<b>Interest Rate</b>	<b>CUSIP Number**</b>
R-9	2014	\$275,000	4.00%	264436 6G 6
R-10	2015	285,000	4.00%	264436 6H 4
R-11	2016	295,000	4.00%	264436 6J 0
R-12	2017	310,000	4.00%	264436 6K 7
R-13	2018	320,000	4.10%	264436 6L 5
R-14	2019	335,000	4.15%	264436 6M 3
R-15	2020	350,000	4.20%	264436 6N 1

The Bonds are being called at a price of par plus accrued interest to February 1, 2013, on which date all interest on said Bonds will cease to accrue. Holders of the Bonds hereby called for redemption are requested to present their Bonds for payment at the office of Wells Fargo Bank, National Association, Corporate Trust Operations, P.O. Box 1517, Minneapolis, Minnesota 55480-1517, on or before February 1, 2013.

**Important Notice:** In compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001, federal backup withholding tax will be withheld at the applicable backup withholding rate in effect at the time of payment by the redeeming institutions if they are not provided with your social security number or federal employer identification number, properly certified. This requirement is fulfilled by submitting a W-9 Form, which may be obtained at a bank or other financial institution.

\* Indicates full call of stated maturity.

\*\* Neither the City nor the escrow agent shall be responsible for the selection of or use of the CUSIP number, and no representation is made as to its correctness indicated in the Notice of Call for Redemption. CUSIP numbers are included solely for the convenience of the Holders.

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Escrow Agent for the City of  
Duluth, Minnesota

**EXHIBIT E**

**REFUNDED OBLIGATIONS RESOLUTION**